

Decision No. 76

Godwyn Agodo, Klaus Berg, David Delmonte, Ann Harrison, Ian M. Knapp, Alexander David Knox, Robert Myers, Christopher J. Redfern, Roberta Preston, Iona Sebastian, Randi Selehdar, Paul Vandenheede, John Vincent-Smith, and Charles Ziegler, Applicants

International Bank for Reconstruction and Development and
International Finance Corporation,
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jimenez de Arechaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of applications, received September 29, 1988, by Godwyn Agodo, Klaus Berg, David Delmonte, Ann Harrison, Ian M. Knapp, Alexander David Knox, Robert Myers, Christopher J. Redfern, Roberta Preston, Iona Sebastian, Randi Selehdar, Paul Vandenheede, John Vincent-Smith and by Charles Ziegler, against the International Bank for Reconstruction and Development and the International Finance Corporation. The President made the following procedural decisions: (i) under Rule 23 para. 2, he allowed the representatives of the World Bank Staff Association to participate in the proceedings as a friend-of-the court; (ii) under Rule 25 he decided to permit cross-referencing for legal arguments and annexes and that the memorandum filed by the Staff Association be incorporated in the application; (iii) under Rule 25 on the Respondents' request for summary dismissal of the application he decided not to stay the proceedings and that the parties should proceed to an exchange of pleadings in accordance with shortened time limits as set by him. The Tribunal decided that the fourteen applications be decided upon together. After the usual exchange of pleadings the cases were listed on April 12, 1989.

The relevant facts:

2. On June 30, 1987 the ten members of the Executive Committee of the Staff Association acting at the request of the Staff Association's Delegate Assembly filed applications before the Tribunal on behalf of themselves and on behalf of other staff similarly situated. On the same day the World Bank Staff Association and four other staff members filed applications in their own interest and on behalf of staff similarly situated.
3. The fifteen applicants alleged that the 1987 World Bank reorganization was implemented in an unlawful manner in violation of the Bank's internal Principles of Staff Employment and Rules. The fifteen applicants requested, inter alia, that the Tribunal order the Bank to reimburse each of them for all fees, costs and disbursements incurred, including reasonable attorneys' fees. The Bank opposed any award of fees and costs.
4. On October 27, 1987 the Tribunal dismissed for lack of standing the ten applications filed by the members of the Executive Committee of the Staff Association as well the application of the Staff Association, but allowed it to participate as friend-of-the-court. The Tribunal also dismissed as inadmissible the four other applications, inter alia, for failure to exhaust internal remedies. Nonetheless in two of them, Harrison and W x , it ruled that the release clause in paragraph 12.01 of Staff Rule 5.09 was invalid and inoperative. The Tribunal in none of the fifteen decisions rendered (Nos. 40-54) expressly ruled upon the Applicant's claim for costs and attorneys' fees.
5. On September 29, 1988 each one of the fourteen Applicants filed a request for clarification of the Tribunal's Decisions Nos. 41-54 and the Staff Association filed a memorandum in support of the fourteen applications as amicus curiae.
6. The Tribunal, like other international administrative tribunals and courts of most member countries of the World Bank I.F.C., has authority to award costs and fees, including attorneys' fees, and it should do so in appropriate cases.
7. The Tribunal should exercise its discretionary power to award costs in these cases because such an award would meet established criteria designed to assure fairness and a full and cogent presentation of important issues to the Tribunal.
8. The Tribunal should award costs to the Applicants because their cases arose under "most exceptional circumstances" the

actions proposed by the Bank during the Reorganization were of an "exceptional" nature, and the need for the staff and the Staff Association to act under such circumstances was certainly "exceptional".

9. Even the United Nations Administrative Tribunal (LINAT), the policy of which is to award costs only in "most exceptional circumstances" because of the UN policy to provide free legal assistance to UN staff, has been awarding incremental legal expenses in appropriate cases.
10. Further, the Tribunal should also award costs to the Applicants in order to ensure an equality of arms between Applicants and the Bank and should not rely on or expect the Staff Association to provide Applicants with adequate representation. In contrast to the approximately one hundred lawyers serving on the legal staff at the Bank Group, an individual staff member without adequate legal counseling can often be at a loss as to how to proceed, especially in cases of considerable complexity such as the ones filed in connection with the reorganization.
11. Under these circumstances it was absolutely crucial that the Staff Association intervened on behalf of all affected staff. However, the Staff Association was not established nor is it structured to fund litigation before this Tribunal. In fact the funds used to pursue claims concerning the enforcement of basic staff rights and to prevent major violations of staff rights during the reorganization are funds diverted from what should be the Staff Association's fundamental function of operating as a consulting partner of the Bank Group's management on numerous personnel and management matters. In order that the Staff Association may pursue its consultation role, it is necessary that the Staff Association's funds be replenished in the amount it was forced to expend to protect individual staff rights.
12. No individual staff member could have initiated and maintained the cases brought by the fourteen Applicants without the financial, administrative and moral support of the Staff Association which was forced to pay a substantial price to win a battle which it should never have had to fight. Under such circumstances an award of costs and fees is not only appropriate, it is just.
13. The Bank's repeated objections to the Applicants' requests for procedural measures greatly contributed to rendering the Applicants' defense an even more difficult, time-consuming and complex matter than it would otherwise have been. The Bank's tactics which caused delays and procedural obstacles needlessly drove up the costs associated with the fifteen original cases.
14. The costs and legal fees claimed by the Applicants were expended in the course of a comprehensive and interrelated presentation of the Applicants' cases and also in efforts to implement the Tribunal's ruling invalidating the release clause. The consolidated presentation of the cases and the liberal cross-referencing procedure authorized by the Tribunal were done for the sake of judicial efficiency and cost-effectiveness. Therefore, the greatest portion of counsel's time was expended in the preparation of the Staff Association's submissions which in turn, were relied upon by the individual Applicants. Since each Applicant incorporated by reference the significant exposition of facts and legal argumentation made in the submission filed in the name of the Staff Association, the cost expended in preparation of the individual submissions was marginal, but since each Applicant benefited from the Staff Association's submissions, the effort expended in presenting the case to the Tribunal is truly indivisible and should be considered as such in awarding costs and legal fees.
15. It is inappropriate and artificial to view the original fifteen cases and the arguments made in the submissions in their support as separable and unrelated. The Tribunal in Harrison invalidated para. 12.01 of Staff Rule 5.09 and made clear that it invalidated the release clause in the context of the totality of the circumstances as they had been presented by all of the Applicants. Furthermore, the Tribunal by holding the release clause inoperative, and by announcing its decision with reference to "staff members" and "major dislocation and staff separations", demonstrated that the Tribunal was concerned with and sought to safeguard the rights of all affected staff, not only those of Harrison.
16. The fees and costs incurred after the October 1987 Tribunal's decisions should be recovered because they have been incurred either in attempts to inform affected staff of their rights under the Tribunal's ruling or in pursuit of these requests for clarification of the Tribunal's ruling on the issue of reimbursement of costs, and as such they are a natural continuation of the same case and properly recoverable as part of the original request for relief.
17. The Respondents' Requests for Summary Dismissal of the Applicants' requests for Clarification of the Tribunal's Decisions Nos. 41 to 54 must be denied because both of the Respondents' contentions, i.e. the invocation of Article XI of the Tribunal's Statute and the doctrine of res judicata, are based on the invalid assumption that the Tribunal has ruled on the Applicants' requests for costs. It did not and it is free to rule on the Applicants' requests for costs which remained unadjudicated. The Tribunal ruled that the applications be "dismissed" for lack of standing and nowhere did the Tribunal reject or deny a plea of the Applicants.

The Respondents' main contentions:

18. The Applicants' requests for clarification of Decisions Nos. 41 to 54 (1987) should be summarily dismissed because they are clearly irreceivable and devoid of all merit. The Tribunal in its judgments of October 27, 1987 has already ruled against an award

of costs including attorneys' fees in these cases. The Tribunal in October 1987 issued final judgments and, as has been its regular practice as well as the practice of other international administrative tribunals, in dismissing the Applicants' cases it also disposed of the Applicants' requests for costs and attorneys' fees without an express ruling on the subject and without discussion. The Tribunal rendered final judgments, did not stay the proceedings and did not reserve the issue for later adjudication. Therefore, the issue presented for clarification is barred from further review under Article XI of the Tribunal's Statute and under the doctrine of res judicata.

19. The Applicants' requests for clarification are an improper attempt to seek review of the Tribunal's Decisions Nos. 41 to 54 (1987) on the issue of costs. The Applicants are seeking to relitigate and review the settled issue of costs and attorneys' fees by introducing new points and authorities and by expanding on arguments made previously. However, none of the requirements of Article XIII of the Tribunal's Statute is fulfilled in the Applicants' cases. The Applicants' requests for clarification are not based on the discovery of any new previously unknown fact, and they are not based on any genuine uncertainty over or ambiguity in the Tribunal's Decisions Nos. 41 to 54. Moreover, they are not timely.
20. The Respondents are not challenging the Tribunal's authority to award costs. In the cases of the ten members of the Staff Association Executive Committee as well as Vandenberg and Klaus Berg, the Tribunal should not award them costs because they were not prevailing parties. They did not have standing to bring their cases before the Tribunal, or the Tribunal did not rule on the merits of their cases because the issues were not yet ripe for review. In the cases of Harrison and Knox the Tribunal should not award them costs because they were not prevailing parties. They cannot be considered to be prevailing parties for the purposes of a claim for costs and legal fees merely by virtue of the fact that the Tribunal resolved the jurisdictional issues in their favor. Since they did not obtain a ruling from the Tribunal on any aspect of their extensive claims, they are not prevailing parties.
21. The Applicants had incurred no costs or attorneys' fee. They are in reality requesting an award to the Staff Association. Therefore, they are asserting monetary claims of others which they may not as stated in **Agodo** Decision No. 41 [1987].
22. The Staff Association has no standing to assert a claim for costs and attorneys' fees. The Tribunal has already ruled that the Staff Association is not and cannot be a party in any proceeding before the Tribunal and, therefore, cannot submit pleas on its own. However, a claim for costs is a "plea" for relief, and only a party may make such a plea. Extensive participation in litigation does not transform an amicus curiae into a party, and the Staff Association cannot become entitled to the rights of a party and assert a claim for costs which is a plea for relief. Consequently, the Staff Association cannot seek an award of costs from the Tribunal. The Tribunal has broad discretion in the award of costs and attorneys' fees to parties, but there exists no authority under the Tribunal's Statute for an award of costs and fees to a non-party.
23. It was a futile expenditure of effort to have the ten Executive Committee members file applications when none of them had been adversely affected by the reorganization but when they sought, instead, to vindicate the alleged rights of others. Significant decisions have resulted from cases brought by individual staff members assisted by other staff members and where the Staff Association itself played no apparent role.
24. The fifteen applications were not of an interrelated nature and the Applicants' consolidated presentation was rejected by the Tribunal precisely because the cases were not indivisible, but rather each had to be considered on its own merits taking account of the facts and circumstances unique to each Applicant.
25. The Applicants are inviting the Tribunal to alleviate the financial burden undertaken by the Staff Association in its various activities, notwithstanding the Tribunal's established role of adjudicator of individual disputes between a staff member and the Bank, and notwithstanding the Respondents' voluntary support to the Staff Association as a matter of policy.
26. The Staff Association is staffed and funded to maintain the legal actions it has initiated and the legal costs of these actions are anticipated as the Staff Association's own documents manifest. Even on the assumption that the Staff Association's coffers needed to be replenished it is not within the scope of the Tribunal's Statute to intervene in this regard.
27. The Respondents should not bear the costs and fees associated with Staff Association functions or activities unrelated to this proceeding such as fees that were incurred subsequent to the Tribunal's decisions as well as fees expended in connection with matters unrelated to research and preparation of pleadings.

Considerations:

28. In these cases the substantive question is whether or not the Tribunal should, in these applications nominally for clarification of Decision Nos. 41 -54, order the Bank to pay costs, disbursements and reasonable attorneys' fees ("costs") incurred by the Applicants in bringing their cases to the Tribunal.
29. The Tribunal is faced with a dispute between the Bank and each one of the Applicants concerning the interpretation that

should be given to the judgments (Decisions 41 -54) previously delivered by the Tribunal. The Tribunal, in all of the fifteen decisions rendered, dismissed the applications or declared them inadmissible without expressly ruling upon the Applicants' claims for costs and attorneys' fees. The parties disagree on the question whether the judgments of the Tribunal should be interpreted as having rejected the Applicants' claims for costs or as having overlooked them.

30. The Tribunal, as an international tribunal, has the inherent power to interpret its own decisions in case of dispute between the parties as to their meaning or scope, even if its Statute contains no provision to that effect. The Hague Convention on Pacific Settlement of Disputes of 1907 gives expression to this general principle, when it provides in Article 82 that:

Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the decision of the tribunal which pronounced it.

31. The Permanent Court of International Justice has recognized that disputes concerning the meaning or scope of a judgment include disputes "as to whether a particular point has or has not been decided with binding force" (Chorzow Factory Case (Request for Interpretation), PCIJ, Series A, No. 13, pp. 11-12). And this is precisely the case here.
32. When the Tribunal decided to dismiss the applications in Decisions 41 -54, it also decided to dismiss by implication all the pleas contained in each application, including the claims for costs. If the Tribunal had wanted to adopt the unusual course of awarding costs to the losing parties it would have expressly so stated. In the jurisprudence of the Tribunal, only those claims for costs or attorneys' fees which are accepted by the Tribunal are expressly mentioned in the judgment; and silence means rejection. In so acting the Tribunal has followed a dictum of the International Court of Justice in its advisory opinion of July 12, 1973, concerning the review of Judgment No. 158 of the United Nations Administrative Tribunal. In that case the Court said:

Account must also be taken of the basic principle regarding the question of costs in contentious proceedings before international tribunals, to the effect that each party shall bear its own in the absence of a specific decision of the tribunal awarding costs (cf. Article 64 of the Statute of the Court) ... The decision merely to allow the general principle to apply does not necessarily require detailed reasoning, and may even be adopted by implication. (1973 ICJ Reports, para. 98, p. 212)

For the above reasons, the Tribunal unanimously decides to dismiss the applications.

E. Jimenez de Arechaga

IS/ Eduardo Jimenez de Arechaga
President

C. F. Amerasinghe

/s/ C. F. Amerasinghe
Executive Secretary